Carry Companies of Illinois, Inc *and* Automobile Mechanics Local 701, International Association of Machinists and Aerospace Workers, AFL–CIO. Case 13–CA–34482

November 8, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

Pursuant to a charge filed on July 29, 1996, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing on August 15, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish necessary and relevant information following the Union's certification in Case 13–RC–19183. (Official notice is taken of the ''record'' in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer and amended answer admitting in part and denying in part the allegations in the complaint.

On October l, 1996, the General Counsel filed a Motion to Transfer Proceedings to the Board and Motion for Summary Judgment. On October 2, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On October 30, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its amended answer and response, the Respondent admits its refusal to bargain and to provide the Union with information, but attacks the validity of the certification on the basis of its contention in the representation proceeding that the Union's original showing of interest in support of its petition for an election may have been obtained through improper means.[1] In addition, the Respondent in its answer denies that the information requested by the Union is necessary and relevant to its duties as the exclusive bargaining representative of the unit.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.[2] We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no factual issues requiring a hearing with respect the Union's request for information. The Union requested the following information from the Respondent:

> 1. An updated employee list including job classifications and dates of hire for all bargaining unit employees and employees doing bargaining unit work.
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> 2. Current wages for all bargaining unit employees and employees doing bargaining unit work specifying hourly or salaried.
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> 3. Work schedules for each department and hours of work for all bargaining unit employees and employees doing bargaining unit work.
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> 4. Copies of company savings plan, 401K plan, or any other investment policy, or retirement savings plan, that is in effect, including costs to employees and employer's contribution to said plans.
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> 5. Copies of any and all current health care plans, including benefits provided, and extra cost benefits for all bargaining unit employees and employees doing bargaining unit work and employer's costs of providing any and all benefits.
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> 6. A current list of all bargaining unit employees and employees doing bargaining unit work, participating in said plans outlined in #4 and #5 and the costs incurred by them.
>
> 7. Bonus pay plans, incentive plans, safety incentive plans etc., currently in effect.

[1] The Respondent raised this issue for the first time following the first election and the Board's subsequent order adopting the hearing officer's findings and recommendations and setting aside that election on the ground that the Union had engaged in objectionable conduct by promising employees reduced initiation fees during the critical period between the petition and the election. Although the Respondent had contested the appropriateness of the unit prior to the first election, the Respondent does not contest, and admits, the appropriateness of the unit in the instant proceeding.

[2] In its response to the Notice to Show Cause, the Respondent cites *Ron Tirapelli Ford v. NLRB*, 987 F.2d 433 (7th Cir. 1993); and *Perdue Farms v. NLRB*, 935 F. Supp. 713 (D.N.C. July 23, 1996), in support of its argument that the Regional Director should have dismissed or investigated the Union's petition following the Board's order directing a second election based on the Union's objectionable conduct during the critical period. In both of those cases, however, there was at least some evidence supporting the allegations that the petitions were tainted. Here, as found by the Regional Director, the Respondent's request for dismissal or further investigation of the petition following the Board's order directing a second election was based on pure conjecture and was unsupported by any evidence.

8. Any other payroll deductions to which all bargaining unit employees and employees doing bargaining unit work have agreed to prior to the election on June 7, 1996.

It is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished on request. See, e.g., *Masonic Hall*, 261 NLRB 436 (1982); and *Mobay Chemical Corp.*, 233 NLRB 109 (1977).

Accordingly, we grant the Motion for Summary Judgment.[3]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Bridgeview, Illinois, is engaged in the transportation, warehousing and packing of food products. During the last calendar year, in conducting its business operations, the Respondent sold and shipped from its Bridgeview, Illinois facility goods valued in excess of $50,000 directly to points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following a second election held June 7, 1996,[4] the Union was certified on July 22, 1996, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time mechanics, mechanics shift leaders, tank wash employees, tank wash shift leaders, and warehouse employees employed by Respondent at its Bridgeview, Illinois facility and warehouse employees employed by Respondent at its Bedford Park, Illinois facility; but excluding all other employees, including office clerical, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

[3] Member Fox notes that she did not participate in the underlying representation case. However, she agrees with her colleagues that the Respondent has raised no new issues in this ''technical'' 8(a)(5) case and that summary judgment is therefore appropriate.

[4] As noted above, on February 21, 1996, the Board issued an order setting aside the first election and ordering a second election based on the hearing officer's findings that the Union had engaged in objectionable conduct during the critical period before the election by promising employees reduced initiation fees.

B. *Refusal to Bargain*

Since about June 28, 1996, the Union has requested the Respondent to bargain and to furnish necessary and relevant information, and since July 17, 1996, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

By refusing on and after July 17, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union relevant and necessary information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Carry Companies of Illinois, Inc., Bridgeview, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Automobile Mechanics Local 701, International Association of Machinists and Aerospace Workers, AFL–CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time mechanics, mechanics shift leaders, tank wash employees, tank wash shift leaders, and warehouse employees employed by Respondent at its Bridgeview, Illinois facility and warehouse employees employed by Respondent at its Bedford Park, Illinois facility; but excluding all other employees, including office clerical, professional employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on June 28, 1996.

(c) Within 14 days after service by the Region, post at its facility in Bridgeview, Illinois, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 29, 1996.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

Dated, Washington, D.C. November 8, 1996

William B. Gould IV,	Chairman
Margaret A. Browning,	Member
Sarah M. Fox,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Automobile Mechanics Local 701, International Association of Machinists and Aerospace Workers, AFL–CIO, as the exclusive representative of the employees in the bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time mechanics, mechanics shift leaders, tank wash employees, tank wash shift leaders, and warehouse employees employed by us at our Bridgeview, Illinois facility and warehouse employees employed by us at our Bedford Park, Illinois facility; but excluding all other employees, including office clerical, professional employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information that it requested on June 28, 1996.

CARRY COMPANIES OF ILLINOIS, INC.